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Slovenia: I'm Back – (Re)Introduction of Silent Partnerships (Light)?

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Proposed amendment to the Slovenian Commercial Company Act

Already back in July 2014, the Slovenian Ministry of Economic Development and Technology introduced a proposal for amending the Slovenian Commercial Companies Act (*Zakon o gospodarskih družbah; "ZGD-1I"*). Apart from the aim of transposing certain pieces of EU legislation regarding financial reporting (e.g. the Directive 2013/34/EU), the proposal also brings certain novelties with regard to (i) the establishment of commercial companies, (ii) (further) limitations regarding the acquisition of own / treasury shares, and, most interestingly, (iii) the (re)introduction of the silent partnership concept.

(Silent) partnership under Slovenian corporate law

Currently, Slovenian corporate law does not foresee the possibility of creating silent partnerships, a concept known in other jurisdictions as "*stille Gesellschaft*" (Austria and Germany), "*associazione in partecipazione*" (Italy), or "*tajno društvo*" (Croatia). Thus, the effects of such silent partnerships can currently only be created on a purely contractual basis (without having any corporate law effects).

However, this has not always been the case. The initial ZGD enacted in 1993 (as well as the ZGD-1 enacted in 2006) contained comprehensive provisions governing such silent partnerships (*tiha družba*), which were created by way of a partnership contract with certain corporate law effects, on the basis of which the silent partner, through a contribution of assets to the holder company's undertaking, obtained the right to participate in the holder company's profits. As in other jurisdictions, such silent partnership had no own legal personality (and was, thus, also not considered a legal entity), but was merely an association of partners creating a special form of a contractual obligation with corporate law effects. As such, neither the (silent) partnership nor the silent partner could hold a position vis-a-vis third persons; rather, it was only the holder company itself that was the exclusive holder of all rights and obligations deriving from the operations of the partnership. Most importantly, the silent partner had no formal corporate role in the holder company and had no right to participate in its decision making process.

As the name itself implies, the fact that a company operates with a silent partner was neither publicized nor disclosed to third persons, unless explicitly foreseen in the company name of the holder company (however, this was not common in practice). For the above reasons, the silent partnership was regarded beneficial both for the silent partner (who, except for the initial contribution in assets, held no obligations towards the holder company and remained anonymous), as well as for the holder (who could obtain financial or other contributions without the need to grant corporate governance powers to the silent partner).

Despite the fact that such arrangement corresponded to the needs of the partners, the impossibility of determining whether a company operates with a silent partner (and to verify the identity of the latter), raised concerns among creditors and other stakeholders, especially with regard to state-owned companies. Such circumstances particularly gave rise to the general impression of non-transparency and were considered fertile soil for deception, abuse and conflicts of interest. In response to growing concerns surrounding the "silent" nature of such partnership, the Slovenian legislator (in a much criticized decision in 2012) reacted in the most drastic way possible, namely by eliminating all provisions regulating silent partnerships, with the consequence that the creation of silent partnerships was no longer permitted and existing silent partnerships had to be released.

The way forward – silent partnership light?

A little more than two years later, a proposal for reintroducing the silent partnership concept is finding its way back to the legislator's desk. With the aim of both ensuring the preservation of the benefits of such partnership and preventing eventual abuses, the proposed amendment keeps the modalities of the silent partnership intact, albeit with one important difference: the obligatory registration of such silent partnerships with the Slovenian Commercial Registry; without such registration, the underlying partnership contract would be considered null and void. Consequently, partners wishing to participate in the holder company's profits (through the contribution of assets to the holder's undertaking) could no longer remain "silent"/anonymous. This structural difference is also reflected in the nomenclature of the latest amendment proposal, which no longer uses the term "silent partnership", but rather calls such institution a "partnership company" (*partnerska družba*).

Although the above-mentioned registration requirement would unquestionably result in a greater level of transparency, the fact that it would prune the partnership of its most appealing (silent) element raises concerns whether such measure is proportional to the aim of such partnership. In addition, such concept would de facto (to a large extent) make the "partnership company" equal to the already regulated concept of a limited partnership (*komanditna družba*). Thus, for the reasons outlined above, it is more than questionable (and remains to be seen) whether such institution would in fact be used in practice.

The amendment proposal was put forward for public discussion in August 2014. Based on the opinions and comments provided by the interested and expert public, it was submitted to the respective ministry at the end of September 2014. A supplemented proposal is expected to be prepared and submitted to the legislator for final approval during the course of 2015.